



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)	
)	
)	ISCR Case No. 20-00385
)	
Applicant for Security Clearance)	

Appearances

For Government: Aubrey De Angelis, Esq., Department Counsel
For Applicant: *Pro se*

August 23, 2021

Decision

TUIDER, Robert, Administrative Judge:

Applicant mitigated security concerns under Guideline B (foreign influence). Eligibility for access to classified information is granted.

Statement of the Case

On February 21, 2018, Applicant submitted a Questionnaire for National Security Positions (SF-86). On May 8, 2020, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline B. The SOR detailed reasons why the CAF was unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On May 13, 2020, Applicant submitted his Answer to the SOR, and requested a hearing.

On March 16, 2021, the Defense Office of Hearings and Appeals (DOHA) assigned the case to me. On April 8, 2021, DOHA issued a notice scheduling the hearing for May 18, 2021. I convened the hearing as scheduled. Department Counsel offered Government Exhibits (GE) 1 and 2, which I admitted without objection. Applicant testified and did not call any witnesses to testify on his behalf. I held the record open

until June 4, 2021, to afford Applicant an opportunity to submit additional evidence. He timely submitted Applicant Exhibits (AE) A through F, which I admitted without objection. On June 3, 2021, DOHA received the hearing transcript (Tr.).

At Department Counsel's request and without objection, I take administrative notice of certain facts about Iraq as contained in official U.S. Government documents (Hearing Exhibit I). Of particular note is the significant threat of crime, terrorism, kidnapping, armed conflict, civil unrest, and Iraq's limited capacity to provide support to U.S. citizens. There are also ongoing human rights problems in Iraq.

Findings of Fact

Applicant is 41 years old and currently employed by a non-DOD employer. He seeks a security clearance to qualify for employment as a linguist for a defense contractor. If cleared, he anticipates being deployed with the U.S. military overseas. (Tr. 11-12, 42-43; GE 1)

Applicant was born in Iraq to Iraqi parents, spent his formative years in Iraq, and graduated from high school in Iraq in 1998. (Tr. 15, 17) Applicant married his wife, a native-born Iraqi citizen, in 2005. As a result of his work with the U.S. military, he qualified for a special immigrant visa (SIV). Applicant, his wife, and minor son immigrated to the United States in 2011, and all three became naturalized U.S. citizens as soon as eligible. Applicant's two youngest sons are U.S.-born citizens. (Tr. 17-20, 29; GE 1, GE 2)

Applicant worked as a linguist for three different multi-national forces from about 2005 to 2007, and participated in Operation Iraqi Freedom. Applicant's work as a linguist with the coalition placed him in great danger. He was followed, received numerous threatening phone calls, and escaped injury from an explosive device. These threats to his life qualified him for an SIV. (Tr. 15, 17, 32-34, 43-48)

Applicant's mother-in-law and father-in-law are resident citizens of Iraq. His mother-in-law is a housewife and his father-in-law is a taxi driver. Applicant's wife has nine sisters and two brothers, who are all resident citizens of Iraq. All but two of Applicant's sisters-in-law are married. None of his in-laws or their spouses are associated with or employed by the Iraqi government. Applicant does not provide any financial support to his in-laws. He and his wife have infrequent contact with them. (Tr. 30-32, 39-41, 52-53; GE 1, GE 2)

Applicant's mother and six of his eight siblings are resident citizens of Iraq. Applicant has five sisters, three in Iraq, one in the Netherlands, and one in the United States. One of his sisters in Iraq is a housewife and a widow. Her late husband was a driver. His second sister in Iraq was a teacher and currently works in a daycare center. Her husband is also a driver. His third sister in Iraq is a retired court clerk, and previously worked for the Iraqi government. Her husband is a taxi driver. His fourth sister has lived in the Netherlands since 2011. His fifth sister and her husband live in the United States and are naturalized U.S. citizens. She works in a daycare center and her

husband works at a driving school. (Tr. 23-26, 37-38; GE 1, GE 2) Applicant's father also lived in Iraq until he passed away in 2020. Applicant's mother was a housewife and his father worked at an elementary school before he retired. (Tr. 27)

Applicant has three brothers, two in Iraq, and one in the United States. One of his brothers in Iraq is a retired media cameraman. His second brother in Iraq works in a transportation office. These two brothers were previously employed by the Iraqi government. His third brother lives in the United States, has a green card, and is employed as a delivery driver. None of Applicant's family members are associated with or employed by the Iraqi government. (Tr. 28-29, 37-38, 52-53; GE 1, GE 2)

Applicant estimated that, before the pandemic, he had quarterly contact with his mother and sisters and brothers not living in the United States. Applicant has an autistic son, with whom he spends a significant amount of his discretionary free time. Since the pandemic, Applicant's contact with his family members in Iraq and his sister in the Netherlands has been infrequent averaging "every couple of months." (Tr. 26-27, 29, 37-38) He has not been back to Iraq to visit his family since 2014. (Tr. 34) Applicant does not provide any financial support to his mother, sisters, or brothers. (Tr. 27-29, 39, 41)

Applicant has no bank accounts or assets in Iraq. (Tr. 34) His assets in the United States consist of a checking account and two automobiles. His annual salary is "around \$32,000 a year." (Tr. 42-43) His long-term goal is to serve the United States as much as possible in the best way that he can. (Tr. 35, 44) He expressed his undivided loyalty to the United States. He credibly testified that his family in Iraq could not be used to coerce or intimidate him into revealing classified information, and that he would report any attempt to do so (Tr. 35-37,44)

Character Evidence

Post-hearing, Applicant submitted a base newspaper article profiling his work as a linguist in Iraq. Applicant is quoted in the article, ". . . the United States saved Iraq from Saddam Hussein but the change is something a few cannot accept. He believes the change is good." (AE A) Applicant also submitted a May 2006 Air Force Certificate of Appreciation for his work as a linguist; a copy of his base ID card in Iraq; a July 2007 letter of recommendation signed by the base contracting officer; a June 2009 letter of recommendation from his former Air National Guard Colonel commander; and a June 2009 letter of recommendation from his former defense contractor program manager. These letters of recommendation were positive and are best summed up by his base contracting officer, "In reading all the past documentation, I can confidently state that all personnel that previously worked with [Applicant], would have nothing but positive accolades about his job performance." (AE B – AE F)

Policies

This case is adjudicated under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive

5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), which became effective on June 8, 2017.

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security."

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline B, Foreign Influence

The security concern for foreign influence is set out in AG ¶ 6:

Foreign contacts and interests, including, but not limited to, business, financial, and property interests, are a national security concern if they result in divided allegiance. They may also be a national security concern if they create circumstances in which the individual may be manipulated or induced to help a foreign person, group, organization, or government in a way inconsistent with U.S. interests or otherwise made vulnerable to pressure or coercion by any foreign interest. Assessment of foreign contacts and interests should consider the country in which the foreign contact or interest is located, including, but not limited to, considerations such as whether it is known to target U.S. citizens to obtain classified or sensitive information or is associated with a risk of terrorism.

The guideline notes several conditions that could raise security concerns under AG ¶ 7. The following are potentially applicable in this case:

(a) contact, regardless of method, with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion;

(b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect classified or sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information or technology; and

(e) shared living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion.

Applicant's mother, five of his eight siblings, and his in-laws are citizens and residents of Iraq. None of his immediate family members or in-laws are currently associated with or employed by the Iraqi government. The potential for terrorist and other violence against U.S. interests and citizens remains high in Iraq, and Iraq continues to have human rights problems. Applicant's foreign contacts create a potential conflict of interest and a heightened risk of foreign exploitation, inducement, manipulation, pressure, and coercion. The above disqualifying conditions have been raised by the evidence.

Conditions that could mitigate foreign influence security concerns are provided under AG ¶ 8. The following is potentially applicable:

(b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, or allegiance to the group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the United States, that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest.

I considered the totality of Applicant's ties to Iraq. The nature of a nation's government, its relationship with the United States, and its human rights record are relevant in assessing the likelihood that an applicant's family members are vulnerable to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, the country is known to conduct intelligence operations against the United States, or the foreign country is associated with a risk of terrorism.

Applicant is a loyal U.S. citizen who has worked overseas under dangerous conditions in support of the national defense. He credibly testified that his family in Iraq could not be used to coerce or intimidate him into revealing classified information. The Appeal Board has stated that such a statement, standing alone, is of limited value, unless there is record evidence that the applicant has acted in a similar manner in the past in comparable circumstances, or that the applicant has a previous track record of complying with security regulations and procedures in the context of dangerous, high-risk circumstances in which he made a significant contribution to the national security. See, e.g., ISCR Case 07-06030 at 3-4 (App. Bd. June 19, 2008). In ISCR Case No. 05-03846 at 6 (App. Bd. Nov. 14, 2006), the Appeal Board discussed this issue as follows:

As a general rule, Judges are not required to assign an applicant's prior history of complying with security procedures and regulations significant probative value for the purposes of refuting, mitigating, or extenuating the security concerns raised by that applicant's more immediate disqualifying conduct or circumstances. See, e.g., ISCR Case No. 01-03357 at 4 (App. Bd. Dec. 13, 2005); ISCR Case No. 02-10113 at 5 (App. Bd. Mar. 25, 2005); ISCR Case No. 03-10955 at 2-3 (App. Bd. May 30, 2006). However, the Board has recognized an exception to that general rule in Guideline B cases, where the applicant has established by credible, independent evidence that his compliance with security procedures and regulations occurred in the context of dangerous, high-risk circumstances in which the applicant had made a significant contribution to the national security. See, e.g., ISCR Case No. 04-12363 at 2 (App. Bd. July 14, 2006). The presence of such circumstances can give credibility to an applicant's assertion that he can be relied upon to recognize, resist, and report a foreign power's attempts at coercion or exploitation.

Applicant worked under dangerous conditions as a linguist in support of the U.S. mission from 2005 to 2007, which earned him a special immigrant visa. He hopes to return to Iraq in support of the U.S. military. I give this experience significant weight. I find that Applicant can be expected to resolve any potential conflict of interest in favor of the United States. AG ¶ 8(b) is applicable.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

- (1) The nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual's age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent behavioral changes;
- (7) the motivation for the conduct;
- (8) the potential for pressure, coercion, exploitation, or duress; and
- (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. I have incorporated my comments under Guideline B in my whole-person analysis.

Applicant's work with the U.S. military in Iraq earned him a special immigrant visa. His goal is to obtain a security clearance to once again serve the United States. The Appeal Board has held that "an applicant's proven record of action in defense of the United States is very important and can lead to a favorable result for an applicant in a Guideline B case." ISCR Case 04-02511 at 4 (App. Bd. Mar. 20, 2007). The complicated state of affairs in Iraq places a significant burden of persuasion on Applicant to demonstrate that his family members in Iraq do not pose an unacceptable security risk. He has met that burden.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated the foreign influence security concerns.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline B: For Applicant

Subparagraphs 1.a-1.f: For Applicant

Conclusion

It is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Robert Tuider
Administrative Judge